

General Information Letter: Definition and apportionment of business income.

August 10, 1998

Dear:

This is in response to your letter dated July 16, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

xxxxxxxxxxxxxxxxxxxx is a Tennessee corporation. For Federal tax purposes, we file a Form 1120S. We file the required tax return in your state and apportion our income or loss. The 1997 tax return has been extended.

During 1996, we move our Tennessee plant operation to another state. We sold the Tennessee plant on January 10, 1997. Should the gain or loss on sale of the plant be apportioned to your state?

Any gain or loss on the sale of the plant would be considered business income. Accordingly, since you have nexus with Illinois a portion of your business income would be allocated to Illinois if you have property, payroll, or sales attributable to Illinois. This is true regardless of which state the

manufacturing plant is in. Section 304 of the Illinois Income Tax Act ("IITA") contains the general rule for the handling of business income by non-residents (copy enclosed).

The proceeds of the plant sale will be excluded from the sales factor in the apportionment fraction pursuant to 86 Illinois Administrative Code §100.3370. I have enclosed a copy of §100.3370 which further explains the property factor.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian  
Associate Attorney (Income Tax)